



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Alcoholic Beverage Control Board
<b>VAC Chapter Number:</b>	3 VAC 5-70
<b>Regulation Title:</b>	Other Provisions
<b>Action Title:</b>	Cider Peddling and Invoicing and Special Event Income and Expense Reports
<b>Date:</b>	11/19/01

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Enter Statement Here

The Alcoholic Beverage Control Board proposes to amend 3 VAC 5-70-20, which generally sets forth the procedures for the handling of cider. The proposed amendment would allow for the peddling of cider and the reporting of cider sales by wholesale wine licensees in the same manner as beer. These changes are intended to accommodate cider wholesalers who are primarily beer wholesalers, allowing them to sell and invoice cider products in the same manner as their beer products.

The Alcoholic Beverage Control Board also proposes to amend 3 VAC 5-70-90, which generally sets forth the record-keeping requirements for ABC licensees. The proposed amendment would add provisions requiring all banquet and special event licensees in charge of public events to report to the Board the income and expenses associated with the event when the licensee engages another person to organize, conduct or operate the event on behalf of the licensee. This amendment is required by subsection B8 of Virginia Code Section 4.1-111. The public events held by special event licensees are generally fund-raising events held by or on behalf of non-profit organizations. The General Assembly passed this subsection in an attempt to insure the public safety and welfare by making sure that non-profit organizations holding such events are actually receiving the benefit of the event proceeds, when a promoter is employed.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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Enter Statement Here

§§ 4.1-103 and 4.1-111 of the Code of Virginia authorize the Board to promulgate regulations which it deems necessary to carry out the provisions of the Alcoholic Beverage Control Act. § 4.1-213 specifically requires the Board to adopt regulations relating the manufacture, possession, transportation and sale of cider. Subsection B8 of Virginia Code Section 4.1-111 mandates that the Board shall promulgate regulations which require that banquet licensees in charge of public events where alcoholic beverages are being sold report to the Board the income and expenses associated with the public event when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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Enter Statement Here

The proposed amendment to 3 VAC 5-70-20 would allow those wholesalers of cider who are primarily beer wholesalers to invoice and sell cider products in the same manner that beer is sold. The Board has determined that the amendment will protect the health, safety or welfare of citizens by allowing cider wholesalers a reasonable flexibility in the manner of selling their products, while insuring that proper records are kept for regulatory compliance and tax liability auditing.

The proposed amendment to 3 VAC 5-70-90 is necessary to comply with the mandate of Virginia Code Section 4.1-111. It would be essential to protect the public safety and welfare as contemplated by subsection B8 of that section, in that it would allow the Board to review the financial records of public events involving the sale of alcohol for the purpose of raising funds for a non-profit organization, when someone other than the non-profit organization is actually organizing, conducting, or operating the event. This would help insure that the profits from the event are appropriately applied by the event promoter to the charitable or civic purpose involved.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

Enter Statement Here

3 VAC 5-70-20, in subsection A, provides that all the provisions of the Board’s regulations applicable to the handling of wine having an alcohol content of not more than 14% by volume shall also apply to the handling of cider. The Board proposes amending 3 VAC 5-70-20 by adding a new subsection which would make subsections A and B4 of 3 VAC 5-60-20 not applicable to the sale of cider. These two subsections of 3 VAC 5-60-20 currently require the use of wine invoices for cider and prohibit its peddling. The proposed amendment would allow those wholesalers of cider who are primarily beer wholesalers to invoice and sell cider products in the same manner that beer is sold.

The Board proposes amending 3 VAC 5-70-90, requiring all banquet and special event licensees in charge of public events to file a report of the income and expenses associated with the event within 30 days after the date of the event, if the licensee engages someone else to organize or conduct the event.

**Issues**

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

Enter Statement Here

There are no disadvantages to the public or the Commonwealth in the amendments to 3 VAC 5-70-20. The primary advantage of implementing the amended provisions will be to allow alcoholic beverage wholesalers greater flexibility in distributing cider products, reducing the number of visits to retailers required to sell and deliver such products, and eliminating the need for a special form used only to record cider sales.

The proposed amendment to 3 VAC 5-70-90 will impose additional reporting requirements on non-profit organizations which sponsor special events at which alcoholic beverages are sold, and will require the Department of Alcoholic Beverage Control to process and store additional paperwork. However, the added requirements are minimal. Special event licensees are already required to maintain all records of income and expenses under current regulations, and the proposed amendment simply requires the completion of a single page form listing totals of income and expenses by major category.

### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

Enter Statement Here

There is no projected fiscal impact to the state, localities, or businesses affected by the revision to 3 VAC 5-70-20, which include alcoholic beverage wholesalers. The amended regulation does not mandate any additional expenditures on the part of industry, and existing enforcement mechanisms are adequate to enforce the regulations as amended. There will be some savings to wholesalers who may reduce the number of visits presently required to sell cider to retailers.

With respect to the proposed amendment to 3 VAC 5-70-90, the Department of Alcoholic Beverage Control issued 4,622 special event licenses during fiscal year 2001. It is unknown how many of these licensees employed a promoter. Printing costs to provide sufficient copies of the requisite forms would total about \$255 annually. Annual processing costs to receive and record the data would be approximately \$2,000. These costs would be paid from agency non-general funds, and would not require additional appropriation. There would be no cost on localities. Non-profit organizations holding special events at which alcoholic beverages are sold would be affected by this regulation. It is estimated that approximately 5,000 such organizations would be required to fill out an additional check-off form at time of application. It is estimated that this would require approximately an additional 10 minutes to read the form and answer the questions. Of the 5,000 applicants, an estimated 1,000 would be required to submit a statement of income

and expenses following the event. It is estimated that preparing this form could add one to two hours to otherwise required record-keeping for each such event.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

Enter Statement Here

The Board proposes amending 3 VAC 5-70-20 by adding a new subsection G which would make subsections A and B4 of 3 VAC 5-60-20 not applicable to the sale of cider.

The Board proposes adding a paragraph to 3 VAC 5-70-90, requiring all banquet and special event licensees in charge of public events, to be defined as any event at which alcoholic beverages are sold to the general public and not only to personally invited guests, to file a report of the income and expenses associated with the event within 30 days after the date of the event, whenever the licensee engages another person to organize, conduct or operate the event on behalf of the licensee. Such licensees would also be required to file with the license application a copy of any agreement with the person engaged to organize, conduct or operate the event.

### Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

Enter Statement Here

The taking of no action was considered as an alternative to the proposed amendment to 3 VAC 5-70-20. The Board determined that there was no public safety interest in maintaining the prohibition against cider peddling, and that the use of either beer or wine invoice forms would satisfy the regulatory interests of the Board.

There are no known alternatives to the action contemplated with respect to 3 VAC 5-70-90 which will meet the statutory mandate.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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Enter Statement Here

The Board received public comment on the proposed amendment to 3 VAC 5-70-20 from the Virginia Beer Wholesalers Association, Inc, and the Virginia Hospitality and Travel Association. The Beer Wholesalers Association supports the concept of the proposed amendments, while the Hospitality and Travel Association is neutral.

Public comment on the proposed amendment to 3 VAC 5-70-90 was received from the Virginia Festival and Events Association and the Virginia Hospitality & Travel Association. Both expressed their desire to work with each other and the board to develop a regulation that is reasonable and does not impose an undue burden on special event licensees. The board believes that the proposed amendment meets these concerns and will address any additional concerns expressed during the public comment and public hearing process.

**Clarity of the Regulation**

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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Enter Statement Here

The Board has examined the regulation and relevant public comments, and has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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Enter Statement Here

The board will initiate a review and re-evaluation of this regulation on May 1, 2003. The goals of this regulation are:  
To maintain reasonable controls on the transportation, storage, and sale of alcoholic beverages in the Commonwealth through a permit procedure for transporting alcoholic beverages through the Commonwealth, sacramental wine, culinary uses, hospital, industrial or manufacturing uses, contract distilling, bonded and out of bond warehouse operations, sale of beer in kegs, and grain alcohol;

To require licensees of the Board to maintain sufficient records of purchases and sales of alcoholic beverages to ensure regulatory compliance without unreasonable burden;  
To provide a reasonable means for first-time violators of the Board's regulations to avoid the expense of an administrative hearing by agreeing to accept a prescribed penalty; and  
To provide guidance to licensees in situations not covered by other chapters.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed regulatory change will have no impact on families.